



The Court Legacy

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An Occurrence at Milan -- Michigan's Last Execution

by Margaret A. Leaming -- Law Clerk to Magistrate Judge Charles E. Binder

I. THE ROBBERY

During the Great Depression, a rash of bank robberies plagued many states including Michigan. Congress enacted the National Bank Robbery Act in 1934 to eradicate the widespread scourge. In 1937 alone, however, there were at least thirteen bank robberies in Michigan.

Rumors about the Dow Chemical Company's \$75,000 payroll ran rampant in Michigan's underworld during the 1930s. The Chemical State Savings Bank in Midland, Michigan, received the payroll twice a month in small bills. Many thought the Chemical Bank would be an easy prospect given its location in the small, sleepy mid-Michigan town of Midland.

Jack Gracey, 28, and Tony Chebatoris, 39, were among those in the underworld who heard the rumors about the Dow payroll. The two met while in prison and planned an escape together. Prison officials uncovered the escape plan, however, and separated the two men.

Gracey had been sentenced in 1923 to 3 to 20 years for armed robbery. He was paroled in 1926 and then sentenced in 1928 to 7 1/2 to 15 years for a holdup. He was paroled on July 3, 1936.

Chebatoris served a maximum 7 1/2 to 15-year term, less good behavior, for holding up an assistant paymaster of the Packard Motor Car Company in Detroit, on July 17, 1920. Released on parole in 1926, he was arrested one year later in Kentucky and returned to Michigan. He was discharged from the Marquette Prison on December 14, 1935.

After casing the Chemical Bank in Midland, Gracey and Chebatoris prepared for their assault on the small-town bank. Unknown to them, Sheriff Venner had deputized men in the business district to thwart any attempt to rob the bank.

Dr. Frank Hardy, a dentist and veteran of World War I, was one of the deputized men. At the

request of Sheriff Venner, he kept his deer rifle handy in his office just above the bank.

On September 29, 1937, at 11:30 a.m., armed with a rifle and sawed-off shotgun, the two robbers made their move. They entered the bank without anyone noticing anything amiss. Gracey walked over to the Chemical Bank's President, Clarence H. Macomber, who was about to go home with his daughter for lunch.

Without warning, Gracey shoved the muzzle of the shotgun into Macomber's ribs. Saying "You can't do that here!", Macomber grappled with Gracey for the shotgun.

Seeing the struggle between the two men, Chebatoris fired his rifle at Macomber. Macomber fell to the floor with the shot. The bank cashier, Paul D. Bywater, ran to Macomber's aid, but Chebatoris fired at him and wounded him too.

The would-be robbers fled from the bank when they realized their plans had gone awry. They jumped into their blue Ford sedan parked in front of the bank. Their plan had been to cross the Benson Street Bridge spanning the Tittabawassee River and to drive to Corunna, about forty miles away. There they would ditch the Ford and drive off in a Dodge they had left there with a change of clothes.

Chebatoris and Gracey hadn't figured on the sharpshooting of a mild-mannered dentist. Hearing the shots below, Dr. Hardy sized up the situation and grabbed his deer rifle. He coolly poked a hole in the screen in the window which had been raised in the September heat.

Taking aim, Dr. Hardy fired at the fleeing gunmen. One of the bullets pierced the rear window of the Ford and hit Chebatoris in the left arm. Chebatoris lost control of the automobile which crashed into a car parked at a gasoline station.

Chebatoris and Gracey leaped from their automobile and fled on foot. Wondering where the rain

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of bullets came from, Chebatoris saw a delivery man in a uniform with a cap. Mistaking Henry Porter for a police officer, Chebatoris shot Porter with his rifle.

Gracey and Chebatoris next attempted to steal a car occupied by a woman and her young son but were unable to operate the car with its newfangled electric shift mechanism. They hurriedly abandoned the car and continued running toward the Benson Street Bridge.

The two then commandeered a pickup truck. Gracey jumped on the running board. From his second-floor office a block away, Dr. Hardy took aim and shot Gracey in the head. Gracey "turned a backflip like an acrobat when one of the .35s hit him. I knew he was done for," said Dr. Hardy in a later interview with reporters.

Alone now, Chebatoris ran along the railroad tracks. He attempted to steal a car occupied by a woman and her young daughter. Her husband heard her screams a block away. This car's electric shift also confounded the fleeing gunman.

In his final attempt to steal a car, Chebatoris backed into another car. The two owners ran to apprehend Chebatoris who they believed to be simply a car thief. Sheriff Ira Smith and Deputy Ben Voorhees assisted the two car owners in capturing Chebatoris and ending his headlong rush for freedom.

II. THE TRIAL

Both Clarence Macomber and Paul Bywater survived their gunshot wounds. Bywater's injuries might have been fatal, but after ten days in serious condition he pulled through.

Henry Porter was not so fortunate. First taken to the small Midland Clinic, Porter was later transferred to Mercy Hospital in nearby Bay City in critical condition. Two weeks later, Porter succumbed to peritonitis.

The newly enacted National Bank Robbery Act provided for the death penalty when a homicide occurred during a robbery at a bank with federal deposits or federally insured deposits. Upon the death of Henry Porter, federal officials therefore stepped in to try Chebatoris under the National Bank Robbery Act, the first person in the United States to be tried under the Act for a homicide.

If Chebatoris had been charged and convicted under state law, he would have been paroled after serving only fourteen years of a life sentence, according to Joel Kahn, Midland County Prosecutor at the time of the robbery.*

The three-day trial began on October 26, 1937, at the federal building in Bay City, Michigan, under the watchful eye of United States District Judge Arthur J. Tuttle. President Taft appointed Judge Tuttle to the

federal bench in 1912, and he served until 1944.

The jury comprised five men and seven women. The foreman, Ora Akin, was a Houghton Lake hotel proprietor. Other members of the jury included farmers, housewives, a retail grocer, a store employee, and a restaurant operator.

John C. Lehr, U.S. Attorney, who had earlier helped to draft the National Bank Robbery Act as a U.S. Congressman, and John W. Babcock, Assistant U.S. Attorney, represented the United States, while Dell H. Thompson and James K. Brooker defended Chebatoris. Both Thompson and Brooker were local attorneys. At the time of the trial, Thompson was President of the Bay County Bar Association. Babcock made an emotional appeal in favor of the death penalty. In his closing argument, he said "You [Chebatoris and others of his ilk] cannot contemptuously flaunt cold-blooded cowardly murder in the face of law enforcement in the United States." Lehr characterized the responsibility of the jury as "just as much a call to arms as it was the morning of April 6, 1917, when Congress declared that 'a state of war existed.'"

Defense counsel made no opening statement and called no witnesses, in contrast to the government's twenty-six witnesses. Thompson and Brooker pleaded with the jury to spare Chebatoris's life. Brooker said, "We are all human, and I don't believe that it lies within our powers or authority, yours or mine, to say that a man shall die." Thompson appealed to the jury for mercy and said "You are all Christian people. The good book tells us that 'Thou Shalt Not Kill.'"

The jury began deliberations at 1:08 p.m. and returned its verdict at 8:28 p.m. on October 28. In their first ballot, the jury voted 8-4 for the death penalty, second 8-4, third 9-3, fourth 8-4, fifth 8-4, and sixth 11-1. The jury voted unanimously in the final ballot.

Jury foreman Ora Akin read the verdict to a crowded courtroom: "We find the defendant guilty as charged, and direct that he be punished by death." Some members of the jury had tears in their eyes as the verdict was read. Chebatoris remained expressionless despite the death sentence. On the way to his cell, however, he muttered "A lot of bull" and began cursing. Chebatoris did not appeal the verdict.

Akin said following the trial that "I have always been opposed to capital punishment, but this is a clearcut case where the laws of the United States must be upheld. Any person naturally hates to condemn a man to die, but here was a man who shot innocent people down in cold blood. It appeared to us the only thing to do under the law as much as we disliked the task."

After praising the jury, witnesses, attorneys, and

other participants in the trial for their courage, Judge Tuttle admonished federal officials "to take very great precaution in taking care of Tony, and see that he doesn't hurt anyone else, and also to see that he doesn't do any harm to himself. I want his life to be taken lawfully, not by himself."

With hindsight, Judge Tuttle's words take on greater significance. In the early morning after the jury's verdict, Chebatoris attempted to kill himself by slashing his wrists and throat with a rusty razor blade. Guards heard a gurgling and rushed into Chebatoris's cell to find him bleeding profusely from his wounds. Prison officials transferred Chebatoris to Saginaw General Hospital where he recovered despite his critical condition.

III. THE HANGING

Michigan was the first state in the Union to abolish capital punishment in 1846 in response to public outcry. In states with no capital punishment, federal law mandated that the court select a state with the death penalty where the execution could take place.

Governor Frank Murphy was adamantly opposed to the execution occurring on Michigan soil. Murphy appealed to President Franklin Roosevelt to move the execution to another state. In the appeal, Governor Murphy stated that the voters of Michigan had rejected capital punishment, and that Michigan had a century-old tradition of no capital punishment.

Roosevelt refused to change the site of the execution, however, because Michigan law mandated hanging for treason. Recent legislation provided that an execution could not be moved from a state with the death penalty for any crime. Chebatoris's hanging therefore took place in Michigan at the U.S. Detention Farm at Milan on July 8, 1938, the first execution in Michigan in 108 years.

While in prison, Chebatoris, reportedly an avowed communist, read books on atheism, communism, socialism, and history. Raised in a Catholic household, Chebatoris later abandoned his religion. According to newspaper accounts, Chebatoris defaced holy pictures on the wall of his prison cell and swore at the nuns who came to visit him. Chebatoris steadfastly refused to have a priest accompany him to his death, but Warden John J. Ryan at last persuaded him.

Construction on the rough pine gallows began several days before the day of the execution. Chebatoris heard the sounds of construction and began pacing in his cell. Prison officials put another prisoner

in the cell to calm him. Otherwise, Chebatoris showed little emotion at the prospect of his impending death. He apparently declined a "last meal" and preferred instead to eat heartily of prison food.

Just before dawn, U. S. Marshal John Barc and Warden Ryan went to Chebatoris's cell. Silent, Chebatoris walked with them down a flight of stairs and along a long hallway. The prison chaplain followed them and said prayers for Chebatoris. Attendants, witnesses, and three members of the press walked behind the chaplain. The only sound was the shuffling of feet.

Chebatoris climbed the thirteen steps of the gallows in the prison yard and walked over to the steel trap which Midland Sheriff Ira M. Smith would operate by pulling on an iron lever. Guards strapped Chebatoris's arms and legs. The hangman placed a black hood over his head and a noose around his neck. The whistle of a freight train sounded in the distance.

In response to a signal, Sheriff Smith pulled on the lever and the trap door opened. Chebatoris fell nine feet from the platform of the gallows. The fall broke his neck. Three physicians pronounced him dead at 5:22 a.m., fifteen minutes after he fell to his death at 5:07 a.m.

Chebatoris's relatives refused at first to claim his corpse, which an undertaker removed from the gallows to bury in the potter's field. His family reconsidered, however, and claimed the body to bury it in the Marble Park Cemetery just outside Milan. A simple headstone marks the gravesite, with the inscription: "Tony Chebatoris, In Loving Memory, 1900-1938."

IV. POSTSCRIPT

In 1963, the Michigan Legislature prohibited the death penalty in a new section to the Michigan Constitution: "No law shall be enacted providing for the penalty of death." Art. 4, § 46. In the same year, the legislature abolished the death penalty for treason. The punishment for treason is now life imprisonment. MCL 750.544.

Federal law still provides for the death penalty when a homicide occurs during a robbery at any member bank of the Federal Reserve System, any bank organized or operating under the laws of the United States, or any institution with federally insured deposits. 18 U.S.C. § 2113.

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An Occurrence at Milan



Chemical State Savings Bank at the time of the robbery.
(Courtesy of Midland County Historical Society)



Dr. Frank Hardy, who shot and killed Jack Gacey.
(Courtesy of Midland County Historical Society)



Chebatoris attempts to hide his face from photographers at the federal building in Bay City.
(Courtesy of Midland Daily News)



Chebatoris shortly after Midland Sheriff Ira Smith took him into custody.
(Courtesy of Midland Daily News)